

CHEN & McCABE, L.L.P.

ATTORNEYS AT LAW

200A MONROE STREET

SUITE 300

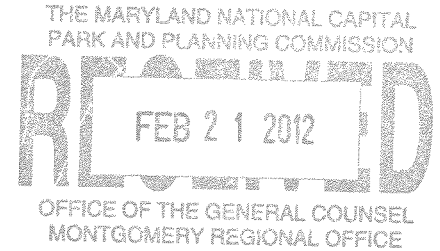
ROCKVILLE, MARYLAND 20850

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WILLIAM JAMES CHEN, JR.*
JOHN F. McCABE, JR.*

*ALSO ADMITTED IN THE
DISTRICT OF COLUMBIA



February 21, 2012

Hand Delivery

Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Request for Reconsideration - Batchellors Forest
Subdivision plats

Dear Ms. Carrier and Board Members:

This letter is transmitted on behalf of Thomas and Ruth Hyde and the Stanmore Family Limited Partnership to request that the Planning Board reconsider the approval of Plats #1 thru #5 (collectively the "Plats") and the conditional approval of Plat #6 for the Batchellors Forest Subdivision.

It is my clients' understanding that the approved Plats were signed by the Chairman on February 9, 2012, and, pursuant to Rule 4.15.2 of the Board's Rules of Procedure, that date becomes the date of adoption of a record plat and begins the period of any appeal. In the absence of a published list enumerating the parties of record, it is assumed that the parties of record are limited to, and this letter has been sent to, the following: M-NCPPC, Stephen Collins c/o Pulte Homes Corporation; Scott Wallace c/o Linowes and Blocher, LLP; and Troy Kimmel c/o the Brooke Grove Elementary School PTA. If the Planning Board provides information on other parties of record, we will promptly send them a copy of this letter.

Reconsideration is sought following receipt and consideration of the memorandum of February 16, 2012, to the Board from Attorney Carol S. Rubin. **Tab 4.** Based upon that review, my clients submit that the approval of the Plats needs to be reconsidered and overturned and that the conditional approval for Plat #6 also needs to be reconsidered. We outline below the basis for reconsideration.

The Board's action of February 9, 2012, sets a bad precedent for RNC Zone development because it allows the Plats, which contain all of the buildable lots for the Batchellors Forest Subdivision, to be recorded without first ensuring that all of the contiguous Rural Open Space area, from which the residential density has been taken for the buildable lots, is preserved in perpetuity as required by the Section 59-C-9.574(h)(4) of the

Zoning Ordinance and by the subdivision's approved plans. The Master Plan, Preliminary Plan, and Site Plan are clear. They reflect long negotiations, and recordation of the residential lots, without the proper recordation of the associated contiguous Rural Open Space area covenant, would leave the community no recourse should the Planning Board and/or developer not uphold their obligations to preserve the contiguous Rural Open Space area in perpetuity.

My clients' letter of February 3, 2012, referencing the Batchellors Forest Subdivision plats is adopted and incorporated by reference into this letter and a copy is attached as **Tab 1**.^{1/} The letter and its exhibits detail my clients' position as it relates to the approval of the Plats and Plat #6 and the requirement to preserve the contiguous Rural Open Space area in perpetuity. It includes discussion of the applicable language in the Olney Master Plan, Zoning Ordinance, and approved plans.

Plat #6 pertains to Parcel A of the Batchellors Forest Subdivision and, we understand, was conditionally approved by the Board on February 9, 2012. It was incomplete and the Plats should not have been deemed complete and eligible for approval. Pursuant to Section 50-36.2(d)(2) of the County Subdivision Regulations, a subdivision record plat must show all existing and proposed encumbrances. In this case, the draft Plat #6, as provided by MNCPPC staff, and attached hereto as **Tab 2**, includes the following note:

Note 10: This property is subject to a Declaration of Rural Open Space recorded in Liber _____ at Folio _____.

In addition, Plat #6 includes a reference to the "Rural Open Space Easement" and space for a Liber and Folio reference. By not including the information related to the covenant required by Section 59-C-9.574(h)(4) of the Zoning Ordinance, the plat does not meet the requirements of Section 59-C-9.574(h)(4) of the Zoning Ordinance.

Furthermore, pursuant to Section 50-37(b) of the Subdivision Regulations a plat is required to comply with the approved preliminary plan and site plan where required. Plat #6, as presented to the Board, was not in compliance with the approved Site Plan Resolution. The Resolution of Site Plan No. 820080190A - Batchellors Forest (**Tab 3**), contains at Condition 3 the following:

Rural Open Space
Section 59-C-9.573(c)(3) of the Zoning Ordinance requires land in the rural open space area to be preserved in perpetuity, either by dedication as parkland or by application of a rural open space easement for the 65.6-acre designated as private rural open space. ("Rural Open Space Area") (Block A: Parcels C, D, E and Lot 13; Block B: Parcel A; Block C: Parcel A, as shown on the Certified Site Plan). A reference to the recorded easement and deed of dedication is to be noted on record plat(s).

^{1/} The courtesy copies of this letter do not include Tab 1 because it is already a part of the record and courtesy copies have been previously provided.

- a) *Applicant to grant a rural open space easement over the portion of the Rural Open Space Area to be owned by the HOA on the west side of Batchellors Forest Road (Block A: Parcels C, D, E and Lot 13; Block B: Parcel A) to M-NCPPC and Greater Sandy Spring Green Space Inc. as joint grantees, and record the easement in the Montgomery County Land Records.*
- b) *Applicant must dedicate the portion of Rural Open Space Area on the east side of Batchellors Forest Road (Block C: Parcel A) to M-NCPPC for uses consistent with the intent of the rural open space in the RNC zone as set forth in Section 59-C-9.23.1, and uses set forth in Section 59-C-9.572.*

Based upon the foregoing language, my clients believe that, at the very least, there must be a deed of dedication and any deed of dedication should be noted on Plat #6 prior to the recordation of the Plats.

Also, as noted by Attorney Rubin in her February 16, 2012, memorandum RE: Deed of Dedication MCPB No. 11-50 Site Plan No. 82008019A, the above zoning reference is actually incorrect. **Tab 4.** The site plan resolution (**Tab 3**) references Section 59-C-9.573(c)(3) of the RNC Zone which indicates that the subdivision was developed under the Standard Method of Development. That is erroneous. It is undisputed that the Batchellors Forest Subdivision was approved under the Optional Method of Development, and the correct reference should be to Section 59-9.574(h)(4).

This error is significant and has been acknowledged by the Board's legal department. My clients believe that there should be a correction of the resolution and brought it to the attention of the Board's counsel. That request was denied by the Board's legal staff. **Tab 5.** A formal request for Correction of Error in Resolution will be filed to address this error. This inaccurate reference to the Zoning Ordinance makes ensuring that the proper covenant is recorded critical and is another reason for the reconsideration of the Plats. Again, the density, at 0.33 units per acre plus MPDU bonus, was transferred from Parcel A to the rest of the subdivision, the area covered by the Plats, and after recordation of the Plats there is no enforcement mechanism to ensure that the Board will be able to properly apply the requirements of the correct section of the Zoning Ordinance.

Further, aside from the deed of dedication, Section 59-C-9.574(h)(4) of the Zoning Ordinance requires the recordation of a covenant to preserve the contiguous Rural Open Space area in perpetuity.

Finally, my clients understood, after the Planning Board hearing on February 9, 2012, that the Board had required that both a deed of dedication and a covenant of Rural Open Space would be recorded and referenced on Plat #6 prior to its approval and recordation. This does not appear to be the case. The proposed deed of dedication provided to the Board by Attorney Rubin does a fair job of describing the rationale for the dedication, but falls well short of the restrictive language to be in the Rural Open Space covenant approved by the Planning Board on June 14, 2007. Indeed, the course of action proposed by Attorney Rubin is to *not* encumber Parcel A with the covenant required by the Zoning Ordinance. A copy of the approved covenant is included at Exhibit D to my letter of February 3, 2012. In her

memorandum of February 16, 2012 (Tab 4), to the Board that accompanied the deed of dedication, Attorney Rubin makes the argument against the recorded covenant by stating that:

However, under §59-C-9.573(c)(3), that easement or covenant may also be by dedication as parkland.

The problem with this argument is that we have already established that the Section 59-C-9.573(c)(3) reference is not accurate given that this subdivision has been developed under the Optional Method of Development, and that the correct language should state explicitly that the Rural Open Space is to be preserved in perpetuity by a covenant. This may be a belt and suspenders approach, but, given the hesitancy on the part of the staff to follow the applicable law, it may be the only approach that provides for the preservation of the contiguous Rural Open Space area in perpetuity.

It should also be recalled that the language in Section 59-C-9.574(h)(4) of the RNC Zone was enacted into law through Zoning Text Amendment No. 06-04 by the unanimous vote of the County Council, sitting as the District Council, on April 18, 2006. This ZTA had broad based community support, as evidenced in the transcript of the March 7, 2006, public hearing (Exhibit B to my letter of February 3, 2012, beginning on page 36, line 19), and the Council legislative package dated April 14, 2006. (Exhibit C to my letter of February 3, 2012.) This broad based community support included, but was not limited to; the civic associations most affected by this subdivision, the Olney Coalition, GOCA, SEROCA, and Greater Sandy Spring Green Spaces, but also included prominent regional civic groups such as the Audubon Society, the Sierra Club and the Montgomery County Civic Federation. In fact, the council report went so far as to state that: "ZTA 06-04 would ensure that land dedicated to rural open space under the requirements of the Rural Neighborhood Cluster (RNC) zone remain in perpetuity as rural open space, whether in public or private ownership" See, Exhibit C, p. 2. The Council report noted that the Planning Board had argued that requiring an easement or covenant for a public agency was "problematic", but the County Council rejected that argument. See, Exhibit C, p.2.

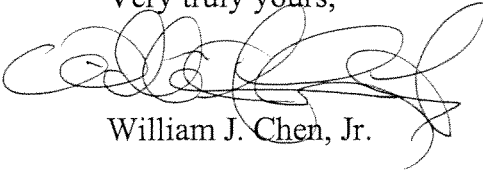
Due to the enactment of ZTA No. 06-04 and the Board's approval of the covenant for RNC – Optional Method of Development subdivisions, my clients assert that the Plats should not be approved nor deemed recordable until such time as the Rural Open Space covenant, along with the required Deed of Dedication, has been executed and recorded in the County Land Records. Only after the recordation of those documents should the Plats, and Plat #6, with the appropriate Liber and Folio references, be allowed to move forward.

For these reasons my clients request that the Board reconsider the Plats and wait until such time as all the appropriate documents are approved and in place before approving the Plats for the Batchellors Forest Subdivision, including Plat #6. The density for the entire project is predicated upon the negotiated, and Master Plan required, dedication of contiguous Rural Open Space area and to move forward with any of the plats without first ensuring that the contiguous Rural Open Space area is dedicated and preserved in perpetuity by covenant as mandated by the Zoning Ordinance sets a very bad precedent for RNC- Optional Method of Development subdivisions throughout the County.

CHEN & MCCABE, L.L.P.

The Board's consideration of this request is sincerely appreciated.

Very truly yours,

A handwritten signature in black ink, appearing to read 'William J. Chen, Jr.', with a large, stylized flourish extending to the right.

William J. Chen, Jr.

WJC:wch
Enclosures

cc: Francoise M. Carrier, Planning Board Chair
Marye Wells-Harley, Planning Board Member
Amy Presley, Planning Board Member
Norman Dreyfuss, Planning Board Member
Casey Anderson, Planning Board Member
Carol S. Rubin, Esq.
Stephen S. Collins, Jr., P.E., Pulte Home Corporation
Scott Wallace, Esq., Linowes and Blocher LLP
Troy Kimmel, Brooke Grove Elementary School Parents and Teachers Association
Thomas and Ruth Hyde

N:\Bill Chen\STANMORE\RECONSIDERATION LTR-2-20-12.wpd

ATTACHMENT ONE SUBMITTED BY WILLIAM CHEN, JR.
TO HIS REQUEST FOR RECONSIDERATION DATED
FEBRUARY 21, 2012.

**Letter of February 3, 2012,
to the Planning Board
from William J. Chen, Jr.**

NOTES

1. This property is zoned RNC.
2. This plat conforms to the requirements of Chapter 25-A of the Montgomery County Code regarding Moderately Priced Dwelling Units.
3. This plat is limited to uses and conditions as required by Site Plan No. 82068019A, and Preliminary Plan No. 120060850 both entitled "Batchellors Forest".
4. Parcel A, Block C is to be conveyed to the MNCP&PC.
5. This property lies within an approved RNC Cluster Development. Subdivision or resubdivision is not permitted and development of the land is permitted only in accordance with the land use indicated on the approved development plan.
6. The property shown herein is subject to the requirements of Chapter 22A of the Montgomery County Forest Conservation Law, including approval of a Final Forest Conservation Plan and appropriate agreements prior to issuance of a sediment control permit.
7. Unless expressly contemplated by the plan as approved, all terms, conditions, agreements, limitations, and requirements associated with any preliminary plan, site plan, project plan, or other plan, allowing development of this property, approved by the Montgomery County Planning Board are intended to survive and not be extinguished by the recording of this plat. The official public files for any such plan are maintained by the Planning Board and available for public review during normal business hours.
8. This Plat is not intended to show every matter affecting or restricting the ownership and use of the property. This Plat is not intended to replace an examination of title or to depict or note all matters affecting title.
9. This property is subject to a Declaration of Covenants recorded in Liber of Folio _____.
10. This property is subject to a Declaration of Rural Open Space recorded in Liber of Folio _____.
11. Coordinates shown herein are based on the Maryland State NAD 83/91 Datum as projected by NGS and are for Geographical Information Systems (GIS) only. Stations used are No. Galt with grid coordinates of North 534457.86 feet and East 1249811.22 feet and No. Gode with coordinates of North 483540.73 feet and East 1361533.03 feet. The combined scale factor for this site is 0.999942362. To convert the grid coordinates to ground/surface coordinates, divide the grid coordinates by the combined scale factor. The distances shown on this plat are as measured on the ground/surface.

To convert the ground/surface distances to grid distances, multiply the ground/surface distances by the combined scale factor.

OWNERS CERTIFICATE

Pulte Home Corporation, a Michigan corporation, owners of the property shown herein, hereby adopt this plat of subdivision; dedicate the streets as shown herein to public use; establish and grant to Montgomery County, Maryland or other appropriate agency temporary slope easements twenty-five (25) feet wide over the lots, outlots and parcels shown herein, adjacent, contiguous, and parallel to the street lines, the slope easements shall be extinguished after all required public improvements in adjacent roadways have been accepted for maintenance by Montgomery County, Maryland or other appropriate agency; hereby grant a Public Utility Easement (P.U.E.) as shown herein to the parties named in a document entitled "Terms and Provisions of Public Utility Easements" as recorded in Liber 3834 of Folio 457 among the Land Records of Montgomery County, Maryland, subject to all current and applicable regulations of all federal, state, and local governing agencies; As owners of this subdivision, we, our successors and assigns, will cause all property corner markers and any other required monumentation, to be set by a registered Maryland Land Surveyor, in accordance with Section 50-24(e)(2) of the Montgomery County Code.

There are no suits, liens, leases, mortgages, or trusts, affecting the property included in this plat of subdivision, except a certain deed of trust and the parties in interest thereto have affixed their signatures herein indicating their assent to this plat of subdivision.

Pulte Home Corporation

 Date _____

We hereby assent to this plat of subdivision.
 (Lending Institution's Name Here)

 Date _____ Trustee _____ Trustee _____

FOR PUBLIC WATER AND SEWER ONLY

THE MARYLAND-NATIONAL CAPITAL PARK & PLANNING COMMISSION
 MONTGOMERY COUNTY PLANNING BOARD

APPROVED: _____

CHAIRMAN SECRETARY-TREASURER

M.N.C.P. & P.C. RECORD FILE No. _____

MONTGOMERY COUNTY, MARYLAND
 DEPARTMENT of PERMITTING SERVICES

APPROVED: _____

DIRECTOR

DATE: _____
 Plat No.: _____

SURVEYOR CERTIFICATE

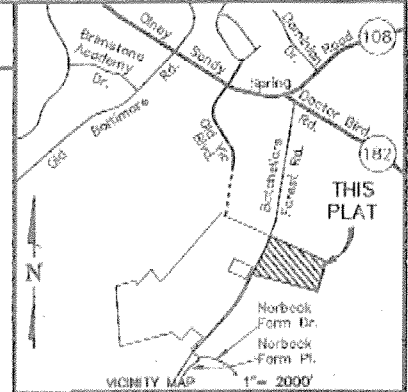
We hereby certify that the plat shown herein is correct; that it is a subdivision of all of the land conveyed by SM Batchellors Forest, L.L.C. to Pulte Home Corporation by deed dated June 29, 2011 and recorded among the Land Records of Montgomery County, Maryland, in Liber 41852 of Folio 93. We hereby certify that, once engaged as described in the owner's certification herein, all monuments and all property markers and other boundary markers will be set in accordance with the provisions of Section 50-24(a) of the Montgomery County Code. The total area included on this plat is 745,500 square feet or 17.11433 acres.

Date _____
 Macris, Hendricks & Glascock, P.A.
 By: Barry E. Hoyle
 Professional Land Surveyor
 Md. Reg. No. 21135
 Expiration Date: June 21, 2012

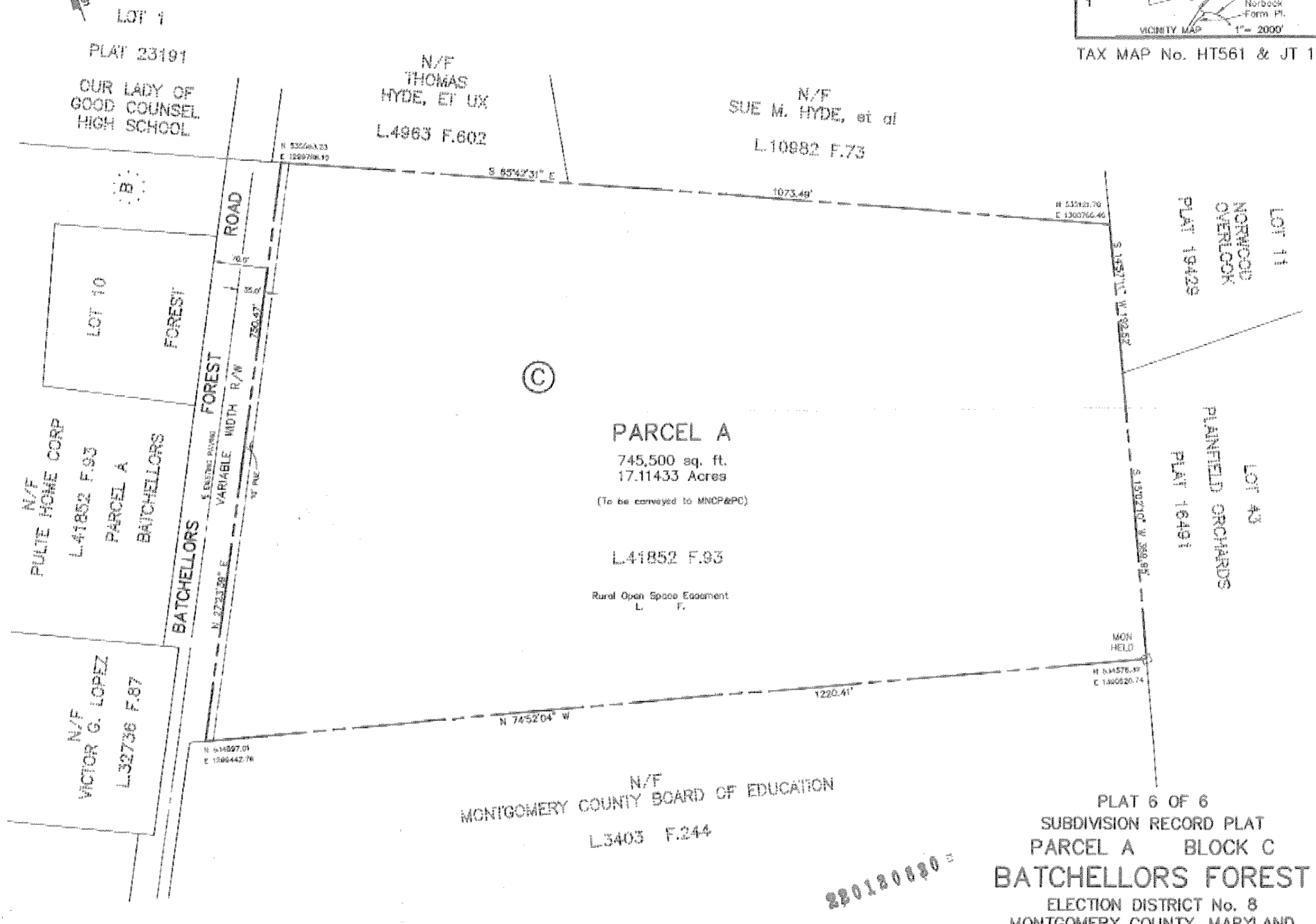
PLAT No.

PLAT TABULATION

Number of Lots	= 0
Number of Parcels	= 1
Area of Lots	= 0 sq. ft.
Area of Parcels	= 745,500 sq. ft.
Area of Street	= 0 sq. ft.
Dedication	= 0 sq. ft.
Total Area	= 745,500 square feet or 17.11433 acres



TAX MAP No. HT561 & JT 121



PLAT 6 OF 6
 SUBDIVISION RECORD PLAT
 PARCEL A BLOCK C
BATCHELLORS FOREST
 ELECTION DISTRICT No. 8
 MONTGOMERY COUNTY, MARYLAND
 SCALE: 1" = 100' DECEMBER, 2011

MHG Macris, Hendricks & Glascock, P.A.
 Engineers • Planners
 Landscape Architects • Surveyors

9226 Wightman Road, Suite 120
 Montgomery Village, Maryland
 20886-1270

Phone: 301.670.0840
 Fax: 301.948.0893
 www.mhgc.com

PLAT NO. 6
 2005.119

OLD # _____

AUG 9 2011



MONTGOMERY COUNTY PLANNING BOARD
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 11-50
Site Plan No. 82008019A
Project Name: Batchellor's Forest
Hearing Date: June 16, 2011

RESOLUTION

WHEREAS, under Montgomery County Code Division 59-D-3, the Montgomery County Planning Board ("Planning Board") is required to review amendments to approved site plans; and

WHEREAS, on July 26, 2007, the Planning Board approved with conditions Preliminary Plan No. 120060850 (MCPB No. 08-15, and corrected MCPB No. 11-21) for 37 lots;

WHEREAS, on July 30, 2009, the Planning Board approved with conditions Site Plan No. 820080190 (MCPB No. 09-95, dated September 14, 2009 and corrected on December 8, 2009) for 37 lots including 32 one-family detached dwelling units and 5 one-family attached MPDUs; and

WHEREAS, on February 22, 2011, SM Batchellor's Forest, LLC ("Applicant"), filed a site plan amendment application designated 82008019A, Batchellor's Forest (the "Amendment") for approval of the following modifications:

1. One market-rate unit converted into one MPDU
 - a) Lot 13, Block A, formerly shown on Street "A" (now labeled as Brompton Circle) with a one-family detached unit, was eliminated. The resulting 7 Lots surrounding the area of common open space were reconfigured and regarded to accommodate the loss of one lot. This change benefits the layout by providing greater setbacks for the corner units abutting Old Vic Boulevard.
 - b) One additional MPDU townhouse was added to the 2 MPDUs located on Victoria Place (formerly labeled as Street "B"). As a result, lots immediately adjacent to the MPDU's have been reconfigured and regarded to accommodate the new unit.
 - c) New lot configurations and layout have led to minor changes to several development standards including minimum lot areas for townhouses and one-family detached, rural open space and common open space. The Project Data Table below outlines these changes. Revised condition of

Approved as to
Legal Sufficiency:

A handwritten signature in black ink, appearing to be "M. C. ...", written over a horizontal line.

8787 Georgia Avenue, Suite 200, Silver Spring, MD 20910 Chairman's Office: 301.495.4605 Fax: 301.495.1320

www.MCParkandPlanning.org E-Mail: mcp-chairman@mncppc.org

- approval #3 captures the new designations for the rural open space parcels consistent with those proposed on the record plats.
- d) Landscaping has been revised for each affected lot.

Project Data Table for the RNC Zone, Optional Method of Development

Development Standard	Permitted/ Required	Approved with 820080190	Approved by the Planning Board & Binding on the Applicant
Min. Area of Development (acres) 59-C-9.575(a)	10	93.64	93.61
Max. No. of Dwelling Units			
		37	37
One-family detached units	n/a	32	31
One-family attached units (MPDUs)	n/a	5	6
Min. Lot Area (sq. ft.)			
One-family detached units	4,000	10,700	14,580
MPDUs	n/a	3,500	2,684
Rural Open Space			
	65-85%	69.8%	70.5%
Common Open Space (SF)			
	n/a	82,023	81,979

2. Water and sewer service

In order to minimize water and sewer connections to Batchellors Forest Road, Lot 13 – Block A and Lot 10 – Block B will be connected to the internal roads for water and sewer service, as requested by WSSC.

- a) A 20-foot house connection easement has been added between Lots 1 and 2, Block B, in order to provide water and sewer service to Lot 10, Block B. This WSSC easement will overlap with the rural open space easement on HOA property.
- b) The LOD at Lot 13, Block A has been revised to accommodate water and sewer house connections from Victoria Place. This WSSC easement will overlap with the rural open space easement on Lot 13.

3. Coordination with DOT's review comments on the Storm Drain and Paving Plan

- a) Include curb returns at the entrance to Farquhar Middle School where the crosswalk from the proposed development crosses Batchellor's Forest Road.

- b) Provide a crosswalk on Old Vic Boulevard at the north leg of Brompton Circle with appropriate sidewalk connections on both sides of Old Vic Boulevard.

WHEREAS, following review and analysis of the Amendment by Planning Board staff ("Staff") and the staffs of other applicable governmental agencies, Staff issued a memorandum to the Planning Board dated June 2, 2011, setting forth its analysis and recommendation for approval of the Amendment ("Staff Report"); and

WHEREAS, on June 16, 2011, Staff presented the Amendment to the Planning Board at a public hearing on the Amendment (the "Hearing") where the Planning Board heard testimony and received evidence submitted for the record on the Amendment; and

WHEREAS, on June 16, 2011, the Planning Board approved the Amendment subject to conditions on the motion of Commissioner Presley, seconded by Commissioner Wells-Harley, with a vote of 4-0, Commissioners Carrier, Dreyfuss, Presley and Wells-Harley voting in favor and Alfandre absent.

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 59, the Planning Board hereby adopts the Staff's recommendation and analysis set forth in the Staff Report and hereby approves the Site Plan No. 82008019A; and

NOW, THEREFORE, BE IT RESOLVED that, pursuant to the relevant provisions of Montgomery County Code Chapter 59, the Montgomery County Planning Board hereby APPROVES the Amendment, subject to the following conditions:

1. Preliminary Plan Conformance
The proposed development must comply with the conditions of approval for preliminary plan 120060850 as listed in MCPB No. 08-15, and corrected MCPB No. 11-21, unless amended. This includes but is not limited to all references to density, rights-of-way, dedications, easements, transportation conditions, DOT conditions, and DPS stormwater conditions.
2. Site Plan Conformance
The proposed development must comply with the conditions of approval for site plan 820080190 as listed in MCPB No. 09-95, dated September 14, 2009 and corrected on December 8, 2009, as amended.
3. Rural Open Space
Section 59-C-9.573(c)(3) of the Zoning Ordinance requires land in the rural open space area to be preserved in perpetuity, either by dedication as parkland or by application of a rural open space easement for the 65.6-acre area designated as

private rural open space ("Rural Open Space Area") (Block A: Parcels C, D, E and Lot 13; Block B: Parcel A; Block C: Parcel A, as shown on the Certified Site Plan). A reference to the recorded easement and deed of dedication is to be noted on the record plat(s).

- a) Applicant must grant a rural open space easement over the portion of the Rural Open Space Area to be owned by the HOA on the west side of Batchellors Forest Road (Block A: Parcels C, D, E and Lot 13; Block B: Parcel A) to M-NCPPC and Greater Sandy Spring Green Space Inc. as joint grantees, and record the easement in the Montgomery County Land Records.
- b) Applicant must dedicate the portion of the Rural Open Space Area on the east side of Batchellors Forest Road (Block C: Parcel A) to M-NCPPC for uses consistent with the intent of the rural open space in the RNC zone as set forth in Section 59-C-9.23.1 and uses as set forth in Section 59-C-9.572.

BE IT FURTHER RESOLVED, that the Planning Board adopts the Staff's recommendation and analysis set forth in the Staff Report and FINDS that the Amendment is consistent with the provisions of § 59-D-3.7 of the Zoning Ordinance and that the Amendment does not alter the intent, objectives, or requirements expressed or imposed by the Planning Board in connection with the originally approved site plan; and

BE IT FURTHER RESOLVED that the proposed conversion of one market-rate unit to an MPDU is consistent with the approved preliminary plan and the Maryland Court decisions concerning this development. The Planning Board originally approved the preliminary plan on January 11, 2008. Two rounds of appeal ensued, first in the Circuit Court and then in the Court of Special Appeals. The appeals concerned how to calculate the number of MPDUs for this development. Ultimately, the Court of Special Appeals upheld the Board's decision to require the Applicant to build six MPDUs instead of the five the Applicant proposed. This amendment modifies the MPDU count for this project consistent with the Court of Special Appeals's ruling.

BE IT FURTHER RESOLVED that all site development elements as shown on Batchellor's Forest drawings stamped by the M-NCPPC on January 18, 2011 and May 6, 2011, shall be required, except as modified by the above conditions of approval; and

BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board and incorporates by reference all evidence of record, including maps, drawings, memoranda, correspondence, and other information; and

BE IT FURTHER RESOLVED, that this Amendment shall remain valid as provided in Montgomery County Code § 59-D-3.8; and

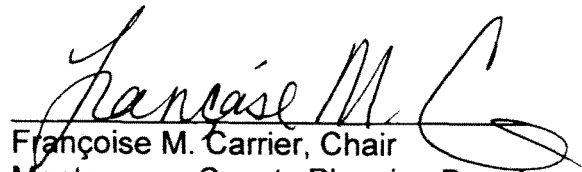
BE IT FURTHER RESOLVED, that the date of this written resolution is AUG 9 2011 (which is the date that this resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this written opinion, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

* * * * *

CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission on motion of Commissioner Dreyfuss, seconded by Commissioner Presley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson, Dreyfuss and Presley present and voting in favor of the motion, at its regular meeting held on Thursday, July 28, 2011, in Silver Spring, Maryland.



Françoise M. Carrier, Chair
Montgomery County Planning Board



February 16, 2012

MEMORANDUM

TO: Montgomery County Planning Board

FROM: Carol S. Rubin, Associate General Counsel
301.495.4646 

RE: Deed of Dedication
MCPB No. 11-50 - Site Plan No. 82008019A

With this memorandum I forward for the Board's approval, a proposed Deed of Dedication of certain Rural Open Space property from Pulte Home Corporation to M-NCPPC to meet Condition No. 3.b of the referenced Site Plan approval.

I. BACKGROUND

At its June 16, 2011 meeting, the Planning Board approved the referenced Site Plan Amendment for Batchellor's Forest; a residential development on approximately 93.64 acres on RNC zoned land in the Olney Master Plan area. Under the optional method development standards for the zone, the Applicant is required to preserve 65% to 85% of the tract area for rural open space. Therefore, the Planning Board imposed Condition No. 3, which reads as follows:

Section 59-C-9.573(c)(3) of the Zoning Ordinance requires land in the rural open space area to be preserved in perpetuity, either by dedication as parkland or by application of a rural open space easement for the 65.6-acre area designated as private rural open space ("Rural Open Space Area") (Block A: Parcels C, D, E and Lot 13; Block B: Parcel A; Block C: Parcel A, as shown on the Certified Site Plan). A reference to the recorded easement and deed of dedication to be noted on the record plat(s).

- a) Applicant must grant a rural open space easement over the portion of the Rural Open Space Area to be owned by the HOA on the west side of Batchellors Forest Road (Block A: Parcels C, D, E and Lot 13; Block B: Parcel A) to M-NCPPC and Greater Sandy Spring Green Space Inc. as joint grantees, and record the easement in the Montgomery County Land Records.
- b) Applicant must dedicate the portion of the Rural Open Space Area on the east side of Batchellors Forest Road (Block C: Parcel A) to M-NCPPC for uses consistent with the intent of the rural open space in the RNC zone as set forth in Section 59-C-9.23.1, and uses as set forth in Section 59-C-9.572.

Although the Project is being developed under the optional method of development, Condition No. 3 erroneously referred to §59-C-9.573(c)(3) of the Zoning Ordinance, which sets forth the form of document to implement preservation of the rural open space under the standard method. The correct reference should have been §59-C-9.574(h)(4) which sets forth the form of document to implement preservation of the rural open space under the optional method development. In either provision, rural open space area must be preserved in perpetuity as rural open space by application of an easement or covenant in a recordable form approved by the Planning Board. However, under §59-C-9.573(c)(3), that easement or covenant may also be by dedication as parkland.

The Maryland Court of Appeals has held a public dedication to be the same as an easement in that the grantor retains a fee interest, subject to an easement that restricts the use of the property for the purpose under which it was conveyed. *M-NCPPC v. Town of Washington Grove*, 408 Md. 37, 75, 968 A.2d 552, 575 (2008). Whether preservation is by deed of dedication, easement or covenant is immaterial, so long as the instrument is in a recordable form approved by the Planning Board.

III. RECOMMENDATION

The Office of General Counsel recommends that the Board approve the proposed Deed of Dedication as required by the Zoning Ordinance.

IV. ATTACHMENTS

Attachment 1 – Resolution

Attachment 2 – Proposed Deed of Dedication

ATTACHMENT 1

AUG 9 2011



MONTGOMERY COUNTY PLANNING BOARD
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 11-50
Site Plan No. 82008019A
Project Name: Batchellor's Forest
Hearing Date: June 16, 2011

RESOLUTION

WHEREAS, under Montgomery County Code Division 59-D-3, the Montgomery County Planning Board ("Planning Board") is required to review amendments to approved site plans; and

WHEREAS, on July 26, 2007, the Planning Board approved with conditions Preliminary Plan No. 120060850 (MCPB No. 08-15, and corrected MCPB No. 11-21) for 37 lots;

WHEREAS, on July 30, 2009, the Planning Board approved with conditions Site Plan No. 820080190 (MCPB No. 09-95, dated September 14, 2009 and corrected on December 8, 2009) for 37 lots including 32 one-family detached dwelling units and 5 one-family attached MPDUs; and

WHEREAS, on February 22, 2011, SM Batchellor's Forest, LLC ("Applicant"), filed a site plan amendment application designated 82008019A, Batchellor's Forest (the "Amendment") for approval of the following modifications:

1. One market-rate unit converted into one MPDU
 - a) Lot 13, Block A, formerly shown on Street "A" (now labeled as Brompton Circle) with a one-family detached unit, was eliminated. The resulting 7 Lots surrounding the area of common open space were reconfigured and regarded to accommodate the loss of one lot. This change benefits the layout by providing greater setbacks for the corner units abutting Old Vic Boulevard.
 - b) One additional MPDU townhouse was added to the 2 MPDUs located on Victoria Place (formerly labeled as Street "B"). As a result, lots immediately adjacent to the MPDU's have been reconfigured and regarded to accommodate the new unit.
 - c) New lot configurations and layout have led to minor changes to several development standards including minimum lot areas for townhouses and one-family detached, rural open space and common open space. The Project Data Table below outlines these changes. Revised condition of

Approved as to
Legal Sufficiency:

A handwritten signature in black ink, likely belonging to a representative of the MNCPPC Legal Department.

8787 Georgia Avenue, N.W., Washington, D.C. 20010 Chairman's Office: 301.495.4605 Fax: 301.495.1320

www.MCParkandPlanning.org E-Mail: mcp-chairman@mncppc.org

- approval #3 captures the new designations for the rural open space parcels consistent with those proposed on the record plats.
 d) Landscaping has been revised for each affected lot.

Project Data Table for the RNC Zone, Optional Method of Development

Development Standard	Permitted/ Required	Approved with 820080190	Approved by the Planning Board & Binding on the Applicant
Min. Area of Development (acres) 59-C-9.575(a)	10	93.64	93.61
Max. No. of Dwelling Units			
One-family detached units	n/a	32	31
One-family attached units (MPDUs)	n/a	5	6
Min. Lot Area (sq. ft.)			
One-family detached units	4,000	10,700	14,580
MPDUs	n/a	3,500	2,684
Rural Open Space			
	65-85%	69.8%	70.5%
Common Open Space (SF)			
	n/a	82,023	81,979

2. Water and sewer service

In order to minimize water and sewer connections to Batchellors Forest Road, Lot 13 – Block A and Lot 10 – Block B will be connected to the internal roads for water and sewer service, as requested by WSSC.

- a) A 20-foot house connection easement has been added between Lots 1 and 2, Block B, in order to provide water and sewer service to Lot 10, Block B. This WSSC easement will overlap with the rural open space easement on HOA property.
- b) The LOD at Lot 13, Block A has been revised to accommodate water and sewer house connections from Victoria Place. This WSSC easement will overlap with the rural open space easement on Lot 13.

3. Coordination with DOT's review comments on the Storm Drain and Paving Plan

- a) Include curb returns at the entrance to Farquhar Middle School where the crosswalk from the proposed development crosses Batchellor's Forest Road.

- b) Provide a crosswalk on Old Vic Boulevard at the north leg of Brompton Circle with appropriate sidewalk connections on both sides of Old Vic Boulevard.

WHEREAS, following review and analysis of the Amendment by Planning Board staff ("Staff") and the staffs of other applicable governmental agencies, Staff issued a memorandum to the Planning Board dated June 2, 2011, setting forth its analysis and recommendation for approval of the Amendment ("Staff Report"); and

WHEREAS, on June 16, 2011, Staff presented the Amendment to the Planning Board at a public hearing on the Amendment (the "Hearing") where the Planning Board heard testimony and received evidence submitted for the record on the Amendment; and

WHEREAS, on June 16, 2011, the Planning Board approved the Amendment subject to conditions on the motion of Commissioner Presley, seconded by Commissioner Wells-Harley, with a vote of 4-0, Commissioners Carrier, Dreyfuss, Presley and Wells-Harley voting in favor and Alfandre absent.

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 59, the Planning Board hereby adopts the Staff's recommendation and analysis set forth in the Staff Report and hereby approves the Site Plan No. 82008019A; and

NOW, THEREFORE, BE IT RESOLVED that, pursuant to the relevant provisions of Montgomery County Code Chapter 59, the Montgomery County Planning Board hereby APPROVES the Amendment, subject to the following conditions:

1. Preliminary Plan Conformance

The proposed development must comply with the conditions of approval for preliminary plan 120060850 as listed in MCPB No. 08-15, and corrected MCPB No. 11-21, unless amended. This includes but is not limited to all references to density, rights-of-way, dedications, easements, transportation conditions, DOT conditions, and DPS stormwater conditions.

2. Site Plan Conformance

The proposed development must comply with the conditions of approval for site plan 820080190 as listed in MCPB No. 09-95, dated September 14, 2009 and corrected on December 8, 2009, as amended.

3. Rural Open Space

Section 59-C-9.573(c)(3) of the Zoning Ordinance requires land in the rural open space area to be preserved in perpetuity, either by dedication as parkland or by application of a rural open space easement for the 65.6-acre area designated as

private rural open space ("Rural Open Space Area") (Block A: Parcels C, D, E and Lot 13; Block B: Parcel A; Block C: Parcel A, as shown on the Certified Site Plan). A reference to the recorded easement and deed of dedication is to be noted on the record plat(s).

- a) Applicant must grant a rural open space easement over the portion of the Rural Open Space Area to be owned by the HOA on the west side of Batchellors Forest Road (Block A: Parcels C, D, E and Lot 13; Block B: Parcel A) to M-NCPPC and Greater Sandy Spring Green Space Inc. as joint grantees, and record the easement in the Montgomery County Land Records.
- b) Applicant must dedicate the portion of the Rural Open Space Area on the east side of Batchellors Forest Road (Block C: Parcel A) to M-NCPPC for uses consistent with the intent of the rural open space in the RNC zone as set forth in Section 59-C-9.23.1 and uses as set forth in Section 59-C-9.572.

BE IT FURTHER RESOLVED, that the Planning Board adopts the Staff's recommendation and analysis set forth in the Staff Report and FINDS that the Amendment is consistent with the provisions of § 59-D-3.7 of the Zoning Ordinance and that the Amendment does not alter the intent, objectives, or requirements expressed or imposed by the Planning Board in connection with the originally approved site plan; and

BE IT FURTHER RESOLVED that the proposed conversion of one market-rate unit to an MPDU is consistent with the approved preliminary plan and the Maryland Court decisions concerning this development. The Planning Board originally approved the preliminary plan on January 11, 2008. Two rounds of appeal ensued, first in the Circuit Court and then in the Court of Special Appeals. The appeals concerned how to calculate the number of MPDUs for this development. Ultimately, the Court of Special Appeals upheld the Board's decision to require the Applicant to build six MPDUs instead of the five the Applicant proposed. This amendment modifies the MPDU count for this project consistent with the Court of Special Appeals's ruling.

BE IT FURTHER RESOLVED that all site development elements as shown on Batchellor's Forest drawings stamped by the M-NCPPC on January 18, 2011 and May 6, 2011, shall be required, except as modified by the above conditions of approval; and

BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board and incorporates by reference all evidence of record, including maps, drawings, memoranda, correspondence, and other information; and

BE IT FURTHER RESOLVED, that this Amendment shall remain valid as provided in Montgomery County Code § 59-D-3.8; and

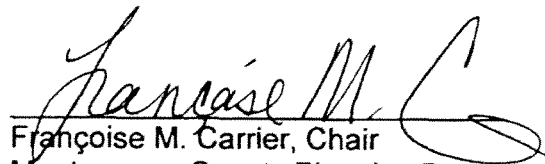
BE IT FURTHER RESOLVED, that the date of this written resolution is AUG 9 2011 (which is the date that this resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this written opinion, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

* * * * *

CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission on motion of Commissioner Dreyfuss, seconded by Commissioner Presley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson, Dreyfuss and Presley present and voting in favor of the motion, at its regular meeting held on Thursday, July 28, 2011, in Silver Spring, Maryland.


Françoise M. Carrier, Chair
Montgomery County Planning Board

SM BACHELLOR'S FOREST, LLC
TEUETT YOUNG
11111 SUNSET HILLS ROAD, SUITE 200
RESTON, VA 20190

MACRIS, HENDRICKS & GLASCOCK
RAY BURNS
9220 WIGHTMAN ROAD, SUITE 120
MONTGOMERY VILLAGE, MD 20886

Mr. Richard Brush, Manager
MCDPS-Water Res. Plan Review
255 Rockville Pike, 2nd Fl
Rockville, MD 20850

Ms. Susan Scaly-Demby, Manager
MCDPS-Zoning
255 Rockville Pike, 2nd Fl
Rockville, MD 20850

Mr. Hadi Masouri
MCDP-Building Construction
255 Rockville Pike, 2nd Fl
Rockville, MD 20850

Mr. Christopher Anderson, MPDU Mgr.
DHCA County Office Bldg,
255 Rockville Pike
Rockville, MD 20850

Ms. Gail Lucas, Manager
MCDPS-Building Construction
255 Rockville Pike, 2nd Fl
Rockville, MD 20850

Lisa S. Schwartz
Senior Planning Specialist
Montgomery County Department of Housing
and Community Affairs
100 Maryland Ave., 4th Floor
Rockville, MD 20850

Mr. Greg Leck
100 Edison Park Dr, 4th Fl
Gaithersburg, MD 20878

Mr. Joseph Y. Cheung, Manager
MCDPS-Right of Way Permitting and
Plan Review
255 Rockville Pike, 2nd Fl
Rockville, MD 20850

Mr. Greg Nichols, Manager
MCDPS-Land Development
255 Rockville Pike, 2nd Fl
Rockville, MD 20850

Mr. Michael Reahl, Manager
MCDPS-Sediment/Stormwater
Inspection and Enforcement
255 Rockville Pike, 2nd Fl
Rockville, MD 20850

Mr. Ehsan Motazedi
MCDPS-Site Plan Enforcement Mgr.
255 Rockville Pike, 2nd Fl
Rockville, Md 20850

Mr. Jay Beatty, Manager
MCDPS-Well and Septic
255 Rockville Pike, 2nd Fl
Rockville, MD 20850

Mr. Leroy Anderson, Manager
MCDPS-Right of Way Development
Inspection and Enforcement
255 Rockville Pike, MD 20850

ATTACHMENT 2

Parcel I.D. # _____

DEED OF DEDICATION

THIS DEED OF DEDICATION ("Deed"), made as of the ____ day of _____, 20 __, by and between Pulte Home Corporation, a Michigan corporation, hereinafter referred to as the Grantor, and The Maryland-National Capital Park and Planning Commission, a body politic, hereinafter referred to as the Grantee.

WHEREAS, the property, as more particularly described below, which is the subject of this Deed ("Property") is located in the Rural Neighborhood Cluster (RNC) zone, in the Olney Master Plan area; and

WHEREAS, on June 16, 2011, the Planning Board approved Site Plan Amendment 82008019A (MCPB Resolution No. 11-50) for Grantor to develop approximately 93.64 acres of property for residential use, of which this Property is a part, subject to a condition that Grantor must dedicate this Property for use as rural open space ("ROS") consistent with the requirements of the RNC zone as set forth in Section 59-C-9.23.1 of the Montgomery County Zoning Ordinance (the "Zoning Ordinance") and the uses set forth in Section 59-C-9.572 of the Zoning Ordinance.

WITNESSETH:

Grantor does hereby dedicate unto the Grantee, its successors and assigns, for use as rural open space consistent with the requirements of the RNC zone as set forth in Section 59-C-9.23.1 of the Zoning Ordinance and the uses set forth in Section 59-C-9.572 of the Zoning Ordinance, all of that piece or parcel of land, situate, lying and being in the Olney (8th) Election District of Montgomery County, Maryland, and more particularly described on Exhibit "A", attached to and made a part of this Deed.

TOGETHER WITH all and singular the buildings, improvements, ways, easements, rights, waters, privileges, covenants, and appurtenances to the same belonging, benefitting or in any way appertaining, and all the estate, title, right, interest and claim, either at law or in equity or otherwise of the Grantor, of, in or out of the Property for so long as the Property is used for the purposes intended by this conveyance.

TO HAVE AND TO HOLD said Property above described or mentioned, and hereby intended to be conveyed, together with the rights, privileges, appurtenances and advantages thereto belonging or appertaining unto and to the proper use and benefit forever of the Grantee, its successors and assigns.

SUBJECT, HOWEVER, to all easements, covenants, conditions, encumbrances, and restrictions of record affecting the Property intended to be conveyed by this Deed.

AND, the Grantor covenants that it will warrant specially the property hereby conveyed and that it will execute further assurances of said lands as may be requisite.

THE Grantor hereby certifies and makes affidavit under the penalties of perjury that there is no consideration paid or to be paid for the foregoing conveyance and that there are no mortgages or deeds of trust assumed by the Grantee.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Grantor has executed this Deed the day and year first above written and states that it is authorized to execute this Deed on behalf of the Partnership.

WITNESS:

GRANTOR:

PULTE HOME CORPORATION,
a Michigan corporation

By: _____
Name: _____
Title: _____
Date: _____

STATE/Commonwealth of _____ *

COUNTY OF _____ *

to wit:

I HEREBY CERTIFY that on this ____ day of _____, 2012, before me, a Notary Public in and for the State/Commonwealth and County aforesaid, personally appeared _____, known to me (or satisfactorily proven) to be the _____ of PULTE HOME CORPORATION, a Michigan corporation, and that such person, being authorized so to do, executed the foregoing and annexed instrument for the purposes therein contained by signing the name of the corporation.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My term of office expires on the ____ day of _____.

[NOTARIAL SEAL]

ATTORNEY'S CERTIFICATION

I HEREBY CERTIFY that the foregoing instrument was prepared by or under the supervision of the undersigned, an attorney at law, duly licensed to practice before the Court of Appeals of Maryland.

Carol S. Rubin

Property Address: Batchellors Forest Road
 Olney, Maryland 20832

Grantor: Pulte Home Corporation
 10600 Arrowhead Drive
 Suite 225
 Fairfax, Virginia 22030
 Attn: Stephen Collins

Grantee: The Maryland-National Capital Park
 and Planning Commission
 9500 Brunett Avenue
 Silver Spring, Maryland 20901

ID#: Part of #08-501-01959272

Title Insurance: N/A

After Recordation, Return to:
Land Acquisition Specialist
M-NCPPC
9500 Brunett Avenue
Silver Spring, Maryland 20901



Tom Hyde <vthyde@gmail.com>

Request for Technical Correction to the Resolution for 82008019A

1 message

Tom Hyde <vthyde@yahoo.com>

Mon, Dec 19, 2011 at 6:19 PM

To: carol.rubin@mncppc.org, john.carter@mncppc-mc.org

Cc: tomandruthh@verizon.net

Mr. Carter and Mrs. Rubin-

Good evening.

I was reviewing my files today and noticed an error that I previously missed in the approved Resolution for the limited site plan amendment (82008019A) for the Batchellors Forest subdivision.

The property has been approved under the RNC-Optional Method, but provision "3" of the resolution references the zoning code, and associated obligations, for the RNC-Standard Method of development - 59-C-9.573(c)(3).

The cover page of the Certified Site Plan and all previous approvals correctly identify the applicable Development Standards and I was hopeful that you might initiate a technical correction that correctly references 59-C-9.574(h)(4) and the resulting change to the first sentence of the provision:

All publicly or privately held land in the rural open space must be preserved in perpetuity as rural open space by application of an easement or covenant in recordable form approved by the Planning Board. The easement or covenant must restrict uses in the rural open space area to those uses allowed under 59-C-9.572, provide for the management of any natural or agricultural features in accordance with the approved site plan, and prohibit any development or subdivision within the rural open space area not expressly authorized.

I believe this would bring this Resolution into line with the applicable zoning code and would be consistent with the previous approvals.

We all realize that these documents are going to come under additional scrutiny and I feel it makes sense to ensure that the language in the document is the correct language and then we can debate the merits of the development standard versus the appropriateness of the chapter and verse.

Please let me know your thoughts.

Regards-

Tom



Tom Hyde <vthyde@gmail.com>

RE: Request for Technical Correction to the Resolution for 82008019A

Rubin, Carol <carol.rubin@mncppc.org>

Tue, Jan 3, 2012 at 2:30 PM

To: Tom Hyde <vthyde@yahoo.com>

Cc: "tomandruthh@verizon.net" <tomandruthh@verizon.net>, "Carter, John"

<John.Carter@montgomeryplanning.org>

Tom,

I appreciate your pointing out the citation error in the Resolution. However, we find the reference to be immaterial to the Planning Board's approval, and therefore unnecessary to take back to the Planning Board so long after the adoption of the Resolution. In either standard or optional method development, the rural open space is protected by restrictive uses memorialized in forms approved by the Planning Board. The same result -- assuring restrictions of use in the rural open space area -- can be accomplished through language in a deed of dedication as opposed to a separate easement document.

59-C-9.571. Purpose.

The cluster method of development is intended to preserve large areas of contiguous rural open space, consistent with the recommendations and guidelines of the applicable master or sector plan. Cluster development is required under both the standard and optional methods of development. Cluster development requires the setting aside of rural open space. Under the optional method of development the maximum development unit density allowed may be increased to accommodate the construction of Moderately Priced Dwelling Units in accordance with Chapter 25A.

59-C-9.573. Standard method of development.

(3) Rural open space: A minimum of 60 percent of the property must be reserved for contiguous rural open space, consistent with the recommendations and guidelines set forth in the applicable master or sector plan. All land in the rural open space area must be preserved in perpetuity, either by dedication as parkland or by application of an easement or covenant in a recordable form approved by the Planning Board.

59-C-9.574. Optional method of development.

(4) All publicly held or privately held land in the rural open space area must be preserved in perpetuity as rural open space by application of an easement or covenant in a recordable form approved by the Planning Board. The easement or covenant must restrict uses in the rural open space area to those uses allowed under 59-C-9.572, provide for the management of any natural or agricultural features in accordance with the approved site plan, and prohibit any development or subdivision within the rural open space area not expressly authorized.

Carol S. Rubin

Associate General Counsel

Maryland-National Capital Park and Planning Commission

8787 Georgia Avenue, Suite 205

Silver Spring, Maryland 20910

tel: 301-495-4646; fax: 301-495-2173

email: carol.rubin@mncppc.org

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Tom Hyde <vthyde@gmail.com>

RE: Request for Technical Correction to the Resolution for 82008019A

Tom Hyde <vthyde@yahoo.com>

Wed, Jan 4, 2012 at 7:34 AM

To: "Rubin, Carol" <carol.rubin@mncppc.org>

Cc: "tomandruthh@verizon.net" <tomandruthh@verizon.net>, "Carter, John" <John.Carter@montgomeryplanning.org>

Mrs. Rubin-

Good morning.

Thank you for taking the time to respond.

Although a block of time has passed, I still believe it makes sense to make the correction.

My concern is in regards to the phrase prior to the one you underlined, in **59-C-9.573**, which reads "either by dedication as parkland or" and then outlines the preservation by either easement or covenant.

In the proper citation, **59-C-9.574.**, the carve out for Park Dedication is removed and "All publicly held or privately held land in the rural open space area must be preserved in perpetuity as rural open space" and preserved by easement or covenant.

From the research I have done, this language was changed as part of ZTA 06-04, by unanimous vote, and was done specifically to address concerns over the larger Rural Open Space parcels that result from the Optional Method and the required clustering of residential units. There was a good deal of testimony at the committee level over potential future uses and ensuring that ROS was maintained as required and the inclusion of publicly held land was the critical change to the zoning ordinance which accomplished that objective.

The supporting documentation, from DRC minutes to the CSP, is very clear in stating that the subdivision was processed under the Optional Method. This correction would simply bring all of the language into conformance and possibly eliminate any future confusion.

Again, I appreciate your time and efforts on this matter.

Thanks

Tom



Tom Hyde <vthyde@gmail.com>

RE: Request for Technical Correction to the Resolution for 82008019A

Rubin, Carol <carol.rubin@mncppc.org>

Thu, Jan 5, 2012 at 4:39 PM

To: Tom Hyde <vthyde@yahoo.com>

Cc: "tomandruthh@verizon.net" <tomandruthh@verizon.net>, "Carter, John" <John.Carter@montgomeryplanning.org>

Tom,

I appreciate your persistence and concern. However, I stand by my earlier decision; that the incorrect reference is immaterial to the Planning Board's approval of Site Plan 82008019A. The rural open space required of the project will be assured by the Deed of Dedication.

Carol S. Rubin

Associate General Counsel

Maryland-National Capital Park and Planning Commission

8787 Georgia Avenue, Suite 205

Silver Spring, Maryland 20910

tel: 301-495-4646; fax: 301-495-2173

email: carol.rubin@mncppc.org

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Tom Hyde <vthyde@gmail.com>

RE: Request for Technical Correction to the Resolution for 82008019A

Tom Hyde <vthyde@yahoo.com>

Fri, Jan 6, 2012 at 3:34 PM

To: "Rubin, Carol" <carol.rubin@mncppc.org>

Cc: "tomandruthh@verizon.net" <tomandruthh@verizon.net>, "Carter, John" <John.Carter@montgomeryplanning.org>

Mrs. Rubin-

Once again, I appreciate you taking your time to respond.

Just to make sure I am understanding it correctly, it is your opinion that a Deed of Dedication, without an accompanying recorded covenant or easement, is all that is required of this development to be in compliance with the applicable zoning ordinance and approvals?

Thank you again for your patience with us on this issue.

Tom

[Quoted text hidden]



Tom Hyde <vthyde@gmail.com>

RE: Request for Technical Correction to the Resolution for 82008019A

Rubin, Carol <carol.rubin@mncppc.org>

Fri, Jan 6, 2012 at 4:08 PM

To: Tom Hyde <vthyde@yahoo.com>

Cc: "tomandruthh@verizon.net" <tomandruthh@verizon.net>, "Carter, John" <John.Carter@montgomeryplanning.org>

Yes. I believe that the covenant or easement contemplated by the Zoning Ordinance can, and in this case will be encompassed within the Deed of Dedication.

Carol S. Rubin

Associate General Counsel

Maryland-National Capital Park and Planning Commission

8787 Georgia Avenue, Suite 205

Silver Spring, Maryland 20910

tel: 301-495-4646; fax: 301-495-2173

email: carol.rubin@mncppc.org

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NOTES

1. This property is zoned RNC.
2. This plat conforms to the requirements of Chapter 25-A of the Montgomery County Code regarding Moderately Priced Dwelling Units.
3. This plat is limited to uses and conditions as required by Site Plan No. 82068019A, and Preliminary Plan No. 120060850 both entitled "Batchellors Forest".
4. Parcel A, Block C is to be conveyed to the MNCP&PC.
5. This property lies within an approved RNC Cluster Development. Subdivision or resubdivision is not permitted and development of the land is permitted only in accordance with the land use indicated on the approved development plan.
6. The property shown herein is subject to the requirements of Chapter 22A of the Montgomery County Forest Conservation Law, including approval of a Final Forest Conservation Plan and appropriate agreements prior to issuance of a sediment control permit.
7. Unless expressly contemplated by the plan as approved, all terms, conditions, agreements, limitations, and requirements associated with any preliminary plan, site plan, project plan, or other plan, allowing development of this property, approved by the Montgomery County Planning Board are intended to survive and not be extinguished by the recordation of this plat. The official public files for any such plan are maintained by the Planning Board and available for public review during normal business hours.
8. This Plat is not intended to show every matter affecting or restricting the ownership and use of the property. This Plat is not intended to replace an examination of title or to depict or note all matters affecting title.
9. This property is subject to a Declaration of Covenants recorded in Liber of Folio _____.
10. This property is subject to a Declaration of Rural Open Space recorded in Liber of Folio _____.
11. Coordinates shown herein are based on the Maryland State NAD 83/91 Datum as projected by NGS and are for Geographical Information Systems (GIS) only. Stations used are No. Galt with grid coordinates of North 534457.86 feet and East 1249811.22 feet and No. Gode with coordinates of North 483540.73 feet and East 1361533.03 feet. The combined scale factor for this site is 0.999942362. To convert the grid coordinates to ground/surface coordinates, divide the grid coordinates by the combined scale factor. The distances shown on this plat are as measured on the ground/surface.

To convert the ground/surface distances to grid distances, multiply the ground/surface distances by the combined scale factor.

OWNERS CERTIFICATE

Pulte Home Corporation, a Michigan corporation, owners of the property shown herein, hereby adopt this plat of subdivision; dedicate the streets as shown herein to public use; establish and grant to Montgomery County, Maryland or other appropriate agency temporary slope easements twenty-five (25) feet wide over the lots, outlots and parcels shown herein, adjacent, contiguous, and parallel to the street lines, the slope easements shall be extinguished after all required public improvements in adjacent roadways have been accepted for maintenance by Montgomery County, Maryland or other appropriate agency; hereby grant a Public Utility Easement (P.U.E.) as shown herein to the parties named in a document entitled "Terms and Provisions of Public Utility Easements" as recorded in Liber 3834 of Folio 457 among the Land Records of Montgomery County, Maryland, subject to all current and applicable regulations of all federal, state, and local governing agencies; As owners of this subdivision, we, our successors and assigns, will cause all property corner markers and any other required monumentation, to be set by a registered Maryland Land Surveyor, in accordance with Section 50-24(e)(2) of the Montgomery County Code.

There are no suits, liens, leases, mortgages, or trusts, affecting the property included in this plat of subdivision, except a certain deed of trust and the parties in interest thereto have affixed their signatures herein indicating their assent to this plat of subdivision.

Pulte Home Corporation
 Date _____
 We hereby assent to this plat of subdivision.
 (Lending Institution's Name Here)
 Date _____ Trustee _____ Trustee _____

FOR PUBLIC WATER AND SEWER ONLY

THE MARYLAND-NATIONAL CAPITAL PARK & PLANNING COMMISSION
 MONTGOMERY COUNTY PLANNING BOARD
 APPROVED: _____
 CHAIRMAN SECRETARY-TREASURER
 M.N.C.P. & P.C. RECORD FILE No. _____

MONTGOMERY COUNTY, MARYLAND
 DEPARTMENT of PERMITTING SERVICES
 APPROVED: _____
 DIRECTOR
 DATE: _____
 Plat No.: _____

SURVEYOR CERTIFICATE

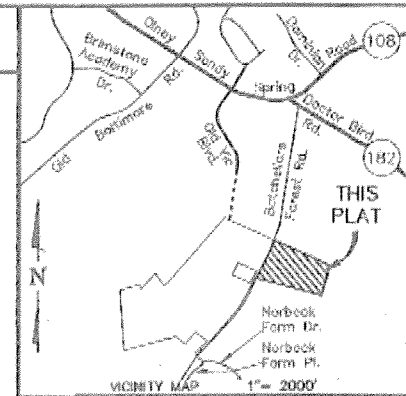
We hereby certify that the plat shown hereon is correct; that it is a subdivision of all of the land conveyed by SM Batchellors Forest, L.L.C. to Pulte Home Corporation by deed dated June 29, 2011 and recorded among the Land Records of Montgomery County, Maryland, in Liber 41852 of Folio 93. We hereby certify that, once engaged as described in the owner's certification hereon, all monuments and all property markers and other boundary markers will be set in accordance with the provisions of Section 50-24(a) of the Montgomery County Code. The total area included on this plat is 745,500 square feet or 17.11433 acres.

Date _____
 Macris, Hendricks & Glascock, P.A.
 By: Barry E. Hoyle
 Professional Land Surveyor
 Md. Reg. No. 21135
 Expiration Date: June 21, 2012

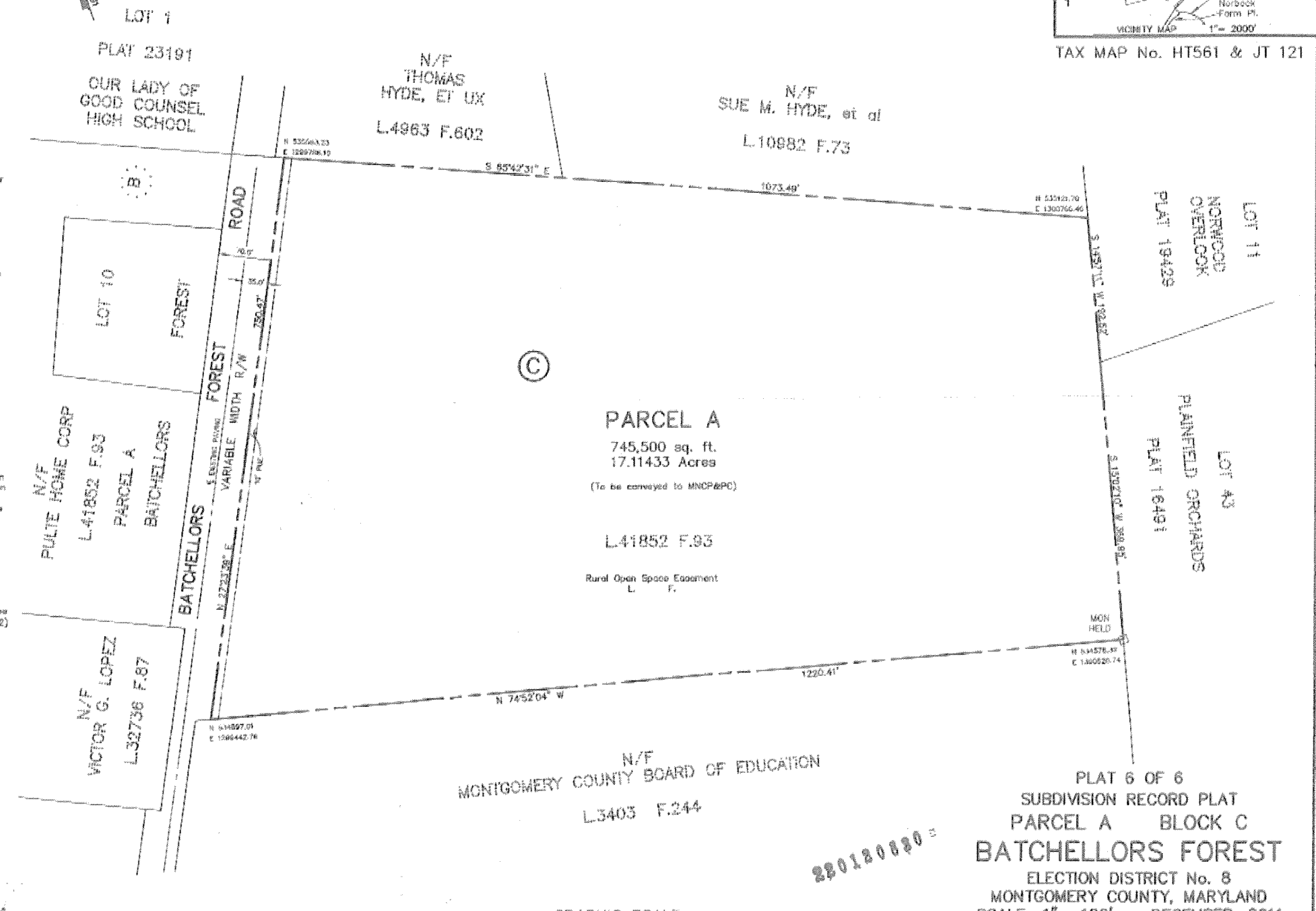
PLAT No.

PLAT TABULATION

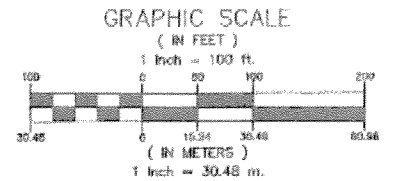
Number of Lots	= 0
Number of Parcels	= 1
Area of Lots	= 0 sq. ft.
Area of Parcels	= 745,500 sq. ft.
Area of Street	= 0 sq. ft.
Dedication	= 0 sq. ft.
Total Area	= 745,500 square feet or 17.11433 acres



TAX MAP No. HT561 & JT 121



PLAT 6 OF 6
 SUBDIVISION RECORD PLAT
 PARCEL A BLOCK C
BATCHELLORS FOREST
 ELECTION DISTRICT No. 8
 MONTGOMERY COUNTY, MARYLAND
 SCALE: 1" = 100' DECEMBER, 2011



MHG Macris, Hendricks & Glascock, P.A.
 Engineers • Planners
 Landscape Architects • Surveyors
 9226 Wightman Road, Suite 120
 Montgomery Village, Maryland
 20886-1270
 Phone: 301.670.0840
 Fax: 301.948.0893
 www.mhgc.com


PLAT NO. 6
 2005.119



February 16, 2012

MEMORANDUM

TO: Montgomery County Planning Board

FROM: Carol S. Rubin, Associate General Counsel
301.495.4646 

RE: Deed of Dedication
MCPB No. 11-50 - Site Plan No. 82008019A

With this memorandum I forward for the Board's approval, a proposed Deed of Dedication of certain Rural Open Space property from Pulte Home Corporation to M-NCPPC to meet Condition No. 3.b of the referenced Site Plan approval.

I. BACKGROUND

At its June 16, 2011 meeting, the Planning Board approved the referenced Site Plan Amendment for Batchellor's Forest; a residential development on approximately 93.64 acres on RNC zoned land in the Olney Master Plan area. Under the optional method development standards for the zone, the Applicant is required to preserve 65% to 85% of the tract area for rural open space. Therefore, the Planning Board imposed Condition No. 3, which reads as follows:

Section 59-C-9.573(c)(3) of the Zoning Ordinance requires land in the rural open space area to be preserved in perpetuity, either by dedication as parkland or by application of a rural open space easement for the 65.6-acre area designated as private rural open space ("Rural Open Space Area") (Block A: Parcels C, D, E and Lot 13; Block B: Parcel A; Block C: Parcel A, as shown on the Certified Site Plan). A reference to the recorded easement and deed of dedication to be noted on the record plat(s).

- a) Applicant must grant a rural open space easement over the portion of the Rural Open Space Area to be owned by the HOA on the west side of Batchellors Forest Road (Block A: Parcels C, D, E and Lot 13; Block B: Parcel A) to M-NCPPC and Greater Sandy Spring Green Space Inc. as joint grantees, and record the easement in the Montgomery County Land Records.
- b) Applicant must dedicate the portion of the Rural Open Space Area on the east side of Batchellors Forest Road (Block C: Parcel A) to M-NCPPC for uses consistent with the intent of the rural open space in the RNC zone as set forth in Section 59-C-9.23.1, and uses as set forth in Section 59-C-9.572.

Although the Project is being developed under the optional method of development, Condition No. 3 erroneously referred to §59-C-9.573(c)(3) of the Zoning Ordinance, which sets forth the form of document to implement preservation of the rural open space under the standard method. The correct reference should have been §59-C-9.574(h)(4) which sets forth the form of document to implement preservation of the rural open space under the optional method development. In either provision, rural open space area must be preserved in perpetuity as rural open space by application of an easement or covenant in a recordable form approved by the Planning Board. However, under §59-C-9.573(c)(3), that easement or covenant may also be by dedication as parkland.

The Maryland Court of Appeals has held a public dedication to be the same as an easement in that the grantor retains a fee interest, subject to an easement that restricts the use of the property for the purpose under which it was conveyed. *M-NCPPC v. Town of Washington Grove*, 408 Md. 37, 75, 968 A.2d 552, 575 (2008). Whether preservation is by deed of dedication, easement or covenant is immaterial, so long as the instrument is in a recordable form approved by the Planning Board.

III. RECOMMENDATION

The Office of General Counsel recommends that the Board approve the proposed Deed of Dedication as required by the Zoning Ordinance.

IV. ATTACHMENTS

Attachment 1 – Resolution

Attachment 2 – Proposed Deed of Dedication

ATTACHMENT 1

AUG 9 2011



MONTGOMERY COUNTY PLANNING BOARD
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 11-50
Site Plan No. 82008019A
Project Name: Batchellor's Forest
Hearing Date: June 16, 2011

RESOLUTION

WHEREAS, under Montgomery County Code Division 59-D-3, the Montgomery County Planning Board ("Planning Board") is required to review amendments to approved site plans; and

WHEREAS, on July 26, 2007, the Planning Board approved with conditions Preliminary Plan No. 120060850 (MCPB No. 08-15, and corrected MCPB No. 11-21) for 37 lots;

WHEREAS, on July 30, 2009, the Planning Board approved with conditions Site Plan No. 820080190 (MCPB No. 09-95, dated September 14, 2009 and corrected on December 8, 2009) for 37 lots including 32 one-family detached dwelling units and 5 one-family attached MPDUs; and

WHEREAS, on February 22, 2011, SM Batchellor's Forest, LLC ("Applicant"), filed a site plan amendment application designated 82008019A, Batchellor's Forest (the "Amendment") for approval of the following modifications:

1. One market-rate unit converted into one MPDU
 - a) Lot 13, Block A, formerly shown on Street "A" (now labeled as Brompton Circle) with a one-family detached unit, was eliminated. The resulting 7 Lots surrounding the area of common open space were reconfigured and regarded to accommodate the loss of one lot. This change benefits the layout by providing greater setbacks for the corner units abutting Old Vic Boulevard.
 - b) One additional MPDU townhouse was added to the 2 MPDUs located on Victoria Place (formerly labeled as Street "B"). As a result, lots immediately adjacent to the MPDU's have been reconfigured and regarded to accommodate the new unit.
 - c) New lot configurations and layout have led to minor changes to several development standards including minimum lot areas for townhouses and one-family detached, rural open space and common open space. The Project Data Table below outlines these changes. Revised condition of

Approved as to
Legal Sufficiency:

A handwritten signature in black ink, appearing to be "M. M.", written over a horizontal line.

8787 Georgia Avenue, N.W., Washington, D.C. 20010 Chairperson's Office: 301.495.4605 Fax: 301.495.1320

www.MCParkandPlanning.org E-Mail: mcp-chairman@mncppc.org

- approval #3 captures the new designations for the rural open space parcels consistent with those proposed on the record plats.
 d) Landscaping has been revised for each affected lot.

Project Data Table for the RNC Zone, Optional Method of Development

Development Standard	Permitted/ Required	Approved with 820080190	Approved by the Planning Board & Binding on the Applicant
Min. Area of Development (acres) 59-C-9.575(a)	10	93.64	93.61
Max. No. of Dwelling Units		37	37
One-family detached units	n/a	32	31
One-family attached units (MPDUs)	n/a	5	6
Min. Lot Area (sq. ft.)			
One-family detached units	4,000	10,700	14,580
MPDUs	n/a	3,500	2,684
Rural Open Space	65-85%	69.8%	70.5%
Common Open Space (SF)	n/a	82,023	81,979

2. Water and sewer service

In order to minimize water and sewer connections to Batchellors Forest Road, Lot 13 – Block A and Lot 10 – Block B will be connected to the internal roads for water and sewer service, as requested by WSSC.

- a) A 20-foot house connection easement has been added between Lots 1 and 2, Block B, in order to provide water and sewer service to Lot 10, Block B. This WSSC easement will overlap with the rural open space easement on HOA property.
- b) The LOD at Lot 13, Block A has been revised to accommodate water and sewer house connections from Victoria Place. This WSSC easement will overlap with the rural open space easement on Lot 13.

3. Coordination with DOT's review comments on the Storm Drain and Paving Plan

- a) Include curb returns at the entrance to Farquhar Middle School where the crosswalk from the proposed development crosses Batchellor's Forest Road.

- b) Provide a crosswalk on Old Vic Boulevard at the north leg of Brompton Circle with appropriate sidewalk connections on both sides of Old Vic Boulevard.

WHEREAS, following review and analysis of the Amendment by Planning Board staff ("Staff") and the staffs of other applicable governmental agencies, Staff issued a memorandum to the Planning Board dated June 2, 2011, setting forth its analysis and recommendation for approval of the Amendment ("Staff Report"); and

WHEREAS, on June 16, 2011, Staff presented the Amendment to the Planning Board at a public hearing on the Amendment (the "Hearing") where the Planning Board heard testimony and received evidence submitted for the record on the Amendment; and

WHEREAS, on June 16, 2011, the Planning Board approved the Amendment subject to conditions on the motion of Commissioner Presley, seconded by Commissioner Wells-Harley, with a vote of 4-0, Commissioners Carrier, Dreyfuss, Presley and Wells-Harley voting in favor and Alfandre absent.

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 59, the Planning Board hereby adopts the Staff's recommendation and analysis set forth in the Staff Report and hereby approves the Site Plan No. 82008019A; and

NOW, THEREFORE, BE IT RESOLVED that, pursuant to the relevant provisions of Montgomery County Code Chapter 59, the Montgomery County Planning Board hereby APPROVES the Amendment, subject to the following conditions:

1. Preliminary Plan Conformance

The proposed development must comply with the conditions of approval for preliminary plan 120060850 as listed in MCPB No. 08-15, and corrected MCPB No. 11-21, unless amended. This includes but is not limited to all references to density, rights-of-way, dedications, easements, transportation conditions, DOT conditions, and DPS stormwater conditions.

2. Site Plan Conformance

The proposed development must comply with the conditions of approval for site plan 820080190 as listed in MCPB No. 09-95, dated September 14, 2009 and corrected on December 8, 2009, as amended.

3. Rural Open Space

Section 59-C-9.573(c)(3) of the Zoning Ordinance requires land in the rural open space area to be preserved in perpetuity, either by dedication as parkland or by application of a rural open space easement for the 65.6-acre area designated as

private rural open space ("Rural Open Space Area") (Block A: Parcels C, D, E and Lot 13; Block B: Parcel A; Block C: Parcel A, as shown on the Certified Site Plan). A reference to the recorded easement and deed of dedication is to be noted on the record plat(s).

- a) Applicant must grant a rural open space easement over the portion of the Rural Open Space Area to be owned by the HOA on the west side of Batchellors Forest Road (Block A: Parcels C, D, E and Lot 13; Block B: Parcel A) to M-NCPPC and Greater Sandy Spring Green Space Inc. as joint grantees, and record the easement in the Montgomery County Land Records.
- b) Applicant must dedicate the portion of the Rural Open Space Area on the east side of Batchellors Forest Road (Block C: Parcel A) to M-NCPPC for uses consistent with the intent of the rural open space in the RNC zone as set forth in Section 59-C-9.23.1 and uses as set forth in Section 59-C-9.572.

BE IT FURTHER RESOLVED, that the Planning Board adopts the Staff's recommendation and analysis set forth in the Staff Report and FINDS that the Amendment is consistent with the provisions of § 59-D-3.7 of the Zoning Ordinance and that the Amendment does not alter the intent, objectives, or requirements expressed or imposed by the Planning Board in connection with the originally approved site plan; and

BE IT FURTHER RESOLVED that the proposed conversion of one market-rate unit to an MPDU is consistent with the approved preliminary plan and the Maryland Court decisions concerning this development. The Planning Board originally approved the preliminary plan on January 11, 2008. Two rounds of appeal ensued, first in the Circuit Court and then in the Court of Special Appeals. The appeals concerned how to calculate the number of MPDUs for this development. Ultimately, the Court of Special Appeals upheld the Board's decision to require the Applicant to build six MPDUs instead of the five the Applicant proposed. This amendment modifies the MPDU count for this project consistent with the Court of Special Appeals's ruling.

BE IT FURTHER RESOLVED that all site development elements as shown on Batchellor's Forest drawings stamped by the M-NCPPC on January 18, 2011 and May 6, 2011, shall be required, except as modified by the above conditions of approval; and

BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board and incorporates by reference all evidence of record, including maps, drawings, memoranda, correspondence, and other information; and

BE IT FURTHER RESOLVED, that this Amendment shall remain valid as provided in Montgomery County Code § 59-D-3.8; and

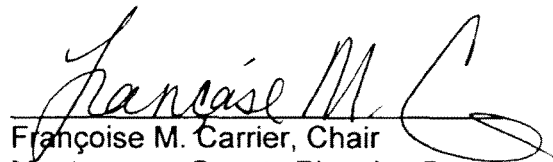
BE IT FURTHER RESOLVED, that the date of this written resolution is AUG 9 2011 (which is the date that this resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this written opinion, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

* * * * *

CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission on motion of Commissioner Dreyfuss, seconded by Commissioner Presley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson, Dreyfuss and Presley present and voting in favor of the motion, at its regular meeting held on Thursday, July 28, 2011, in Silver Spring, Maryland.


Françoise M. Carrier, Chair
Montgomery County Planning Board

SM BACHELLOR'S FOREST, LLC
TEUETT YOUNG
11111 SUNSET HILLS ROAD, SUITE 200
RESTON, VA 20190

MACRIS, HENDRICKS & GLASCOCK
RAY BURNS
9220 WIGHTMAN ROAD, SUITE 120
MONTGOMERY VILLAGE, MD 20886

Mr. Richard Brush, Manager
MCDPS-Water Res. Plan Review
255 Rockville Pike, 2nd Fl
Rockville, MD 20850

Ms. Susan Scaly-Demby, Manager
MCDPS-Zoning
255 Rockville Pike, 2nd Fl
Rockville, MD 20850

Mr. Hadi Masouri
MCDP-Building Construction
255 Rockville Pike, 2nd Fl
Rockville, MD 20850

Mr. Christopher Anderson, MPDU Mgr.
DHCA County Office Bldg,
255 Rockville Pike
Rockville, MD 20850

Ms. Gail Lucas, Manager
MCDPS-Building Construction
255 Rockville Pike, 2nd Fl
Rockville, MD 20850

Lisa S. Schwartz
Senior Planning Specialist
Montgomery County Department of Housing
and Community Affairs
100 Maryland Ave., 4th Floor
Rockville, MD 20850

Mr. Greg Leck
100 Edison Park Dr, 4th Fl
Gaithersburg, MD 20878

Mr. Joseph Y. Cheung, Manager
MCDPS-Right of Way Permitting and
Plan Review
255 Rockville Pike, 2nd Fl
Rockville, MD 20850

Mr. Greg Nichols, Manager
MCDPS-Land Development
255 Rockville Pike, 2nd Fl
Rockville, MD 20850

Mr. Michael Reahl, Manager
MCDPS-Sediment/Stormwater
Inspection and Enforcement
255 Rockville Pike, 2nd Fl
Rockville, MD 20850

Mr. Ehsan Motazed
MCDPS-Site Plan Enforcement Mgr.
255 Rockville Pike, 2nd Fl
Rockville, Md 20850

Mr. Jay Beatty, Manager
MCDPS-Well and Septic
255 Rockville Pike, 2nd Fl
Rockville, MD 20850

Mr. Leroy Anderson, Manager
MCDPS-Right of Way Development
Inspection and Enforcement
255 Rockville Pike, MD 20850

ATTACHMENT 2

Parcel I.D. # _____

DEED OF DEDICATION

THIS DEED OF DEDICATION (“Deed”), made as of the _____ day of _____, 20____, by and between Pulte Home Corporation, a Michigan corporation, hereinafter referred to as the Grantor, and The Maryland-National Capital Park and Planning Commission, a body politic, hereinafter referred to as the Grantee.

WHEREAS, the property, as more particularly described below, which is the subject of this Deed (“Property”) is located in the Rural Neighborhood Cluster (RNC) zone, in the Olney Master Plan area; and

WHEREAS, on June 16, 2011, the Planning Board approved Site Plan Amendment 82008019A (MCPB Resolution No. 11-50) for Grantor to develop approximately 93.64 acres of property for residential use, of which this Property is a part, subject to a condition that Grantor must dedicate this Property for use as rural open space (“ROS”) consistent with the requirements of the RNC zone as set forth in Section 59-C-9.23.1 of the Montgomery County Zoning Ordinance (the “Zoning Ordinance”) and the uses set forth in Section 59-C-9.572 of the Zoning Ordinance.

WITNESSETH:

Grantor does hereby dedicate unto the Grantee, its successors and assigns, for use as rural open space consistent with the requirements of the RNC zone as set forth in Section 59-C-9.23.1 of the Zoning Ordinance and the uses set forth in Section 59-C-9.572 of the Zoning Ordinance, all of that piece or parcel of land, situate, lying and being in the Olney (8th) Election District of Montgomery County, Maryland, and more particularly described on Exhibit “A”, attached to and made a part of this Deed.

TOGETHER WITH all and singular the buildings, improvements, ways, easements, rights, waters, privileges, covenants, and appurtenances to the same belonging, benefitting or in any way appertaining, and all the estate, title, right, interest and claim, either at law or in equity or otherwise of the Grantor, of, in or out of the Property for so long as the Property is used for the purposes intended by this conveyance.

TO HAVE AND TO HOLD said Property above described or mentioned, and hereby intended to be conveyed, together with the rights, privileges, appurtenances and advantages thereto belonging or appertaining unto and to the proper use and benefit forever of the Grantee, its successors and assigns.

SUBJECT, HOWEVER, to all easements, covenants, conditions, encumbrances, and restrictions of record affecting the Property intended to be conveyed by this Deed.

AND, the Grantor covenants that it will warrant specially the property hereby conveyed and that it will execute further assurances of said lands as may be requisite.

THE Grantor hereby certifies and makes affidavit under the penalties of perjury that there is no consideration paid or to be paid for the foregoing conveyance and that there are no mortgages or deeds of trust assumed by the Grantee.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Grantor has executed this Deed the day and year first above written and states that it is authorized to execute this Deed on behalf of the Partnership.

WITNESS:

GRANTOR:

PULTE HOME CORPORATION,
a Michigan corporation

By: _____
Name: _____
Title: _____
Date: _____

STATE/Commonwealth of _____

*
*
*

to wit:

COUNTY OF _____

I HEREBY CERTIFY that on this ____ day of _____, 2012, before me, a Notary Public in and for the State/Commonwealth and County aforesaid, personally appeared _____, known to me (or satisfactorily proven) to be the _____ of PULTE HOME CORPORATION, a Michigan corporation, and that such person, being authorized so to do, executed the foregoing and annexed instrument for the purposes therein contained by signing the name of the corporation.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My term of office expires on the ____ day of _____.

[NOTARIAL SEAL]

ATTORNEY'S CERTIFICATION

I HEREBY CERTIFY that the foregoing instrument was prepared by or under the supervision of the undersigned, an attorney at law, duly licensed to practice before the Court of Appeals of Maryland.

Carol S. Rubin

Property Address: Batchellors Forest Road
 Olney, Maryland 20832

Grantor: Pulte Home Corporation
 10600 Arrowhead Drive
 Suite 225
 Fairfax, Virginia 22030
 Attn: Stephen Collins

Grantee: The Maryland-National Capital Park
 and Planning Commission
 9500 Brunett Avenue
 Silver Spring, Maryland 20901

ID#: Part of #08-501-01959272

Title Insurance: N/A

After Recordation, Return to:
Land Acquisition Specialist
M-NCPPC
9500 Brunett Avenue
Silver Spring, Maryland 20901